







London's Liberties; 7 LEARNED ARGVMENT

LAVV & REASON,

Sainrday, December 14. 1650.

Before the Lord Major, Court of Aldermen, and Common Councell at Guild Hall, LONDON,

Between Mr Maynard Of Councell for the Companies of Lindon.

And SMajor John Wildman Of Councell for and the Freemen of Lordon.

Wherein the Freedom of the Citizens of LONDON in their Elections of their chief Officers, is fully Debated, the most Ancient Charters and Records of the City examined, and the principles of just Government cleared & vindicated,

This Discourse was exactly taken in Short-hand by feverall that were present at the Argument, who have compared their Notes, and published them for Publiqueuse.

London, Printed by fa. Cottrel for Gyles Calvert at the sign of the blackspread Eagle at the West-end of Pauls, 1654. 1650

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PRESENTED BY

Professor J. A. W. Gunn, 2003

Kingston, Ontario, Canada

LONDON'S LIBERTIES

OR

A Learned Argument of Law and Reason

1/251 1650 - 266

Printed in Great Britain by Scolar Press Limited, Menston, Yorkshire London's liberties is a report of a debate on London's constitution. On the one side are the spokesmen for the reformers who propose that the Lord Mayor and sheriffs be elected indirectly by representatives of the wards; on the other are the counsel for the Livery Companies defending the existing method of election by Common Hall. Published by Giles Calvert, well-known as publisher of many Leveller and Digger tracts, the pamphlet probably formed part of the reformers' campaign. Thomason dated his copy December 19, just five days after the debate. The politics of this period are treated by James E. Farnell, 'The usurpation of honest London householders: Barebone's Parliament', English Historical Review, 82 (1967), esp. pp. 33–43. Dr Valerie Pearl, who has kindly helped with this note, will treat London politics during the Puritan revolution in a forthcoming book.

The arguments, like those in the Putney debates, combine the examination of historical and legal precedent (often narrowly antiquarian) with exposition of the general principles of rightful government. John Wildman does most of the speaking for the insurgents. Although he withdrew from Leveller politics in 1649, he deploys Leveller rhetoric to establish a method of election favourable to the Godly party. With him is the pamphleteering Independent, John Price, who was a member of Goodwin's congregation at Coleman street and the putative author of *Walwins wiles*.

How seriously this attack was taken is indicated by the appearance for the Livery Companies of three of the most eminent lawyers of the period: John Maynard, Matthew Hale (here Hales) and John Wilde (or Wylde). All had been prominent in the Long Parliament; all took the Engagement; all survived the Restoration; all held high judicial office at various times. (For them, see the D.N.B.)

The tract was reprinted in 1682 to oppose Charles II's attack on the City's charter. The title page announces not merely the debate on the franchise and the examination of ancient charters, but also that the participants agreed that these charters confirm former rights. A new preface piously hopes that the opinions of the three great oracles of the law will decide the differences between the citizens that adhere to the Lord Mayor and those (the Whigs) that adhere to the sheriffs. (This preface replaces 'The Publisher to the Reader'.)

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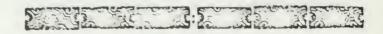
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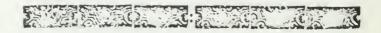
London, Printed by Ja. Cottrel for Gyles Calvert at the sign of the black spread Eagle at the West-end of Pauls, 1651. [650]



The Publisher to the Reader.

GENTLEMEN,

Hen the House is not mine, you cannot expect that I should build the Porch: Yet 'tis but reasonable, that having offered the House to your view, I should shew you the Way that Leads unto it; I mean, the Occasion of the following Discourse. Please then to be informed, that some Good men of the Common-Councell perceiving the Cities Poverty (the CHAMBER of London being utterly exhausted, and the poor Orphans Portions expended) moved the Court that a Committee might be Chosen to examine the Accounts of the CHAMBER; which was Ordered: And the Committee having Examined, made this following Report.



August 26. 1650.

The Report of the Committee appointed for Examination of the state of the CHAMBER of London.

Bout 1630. we finde the Chamber to be indebted about the }050000.00.00.

At Michaelmasse 1649, the Accompt of the Chamber being then
Cast up, the Chamber was then in Debt : Viz. 1. s. d.

To Orphans 169654:01:0 $\frac{1}{4}$ 2 264066.14.05 $\frac{1}{4}$ 2 264066.14.05 $\frac{1}{4}$

The means whereby it came into Debt, are either Extraordinary, or Ordinary.

Exiratrian,		
	A Gold Cup given the Prince	001191.04.05
Anno 1633°	Presents given to the King, Queen, and Prince	00326000.00
Anno 1634	A Tewell given the Oueen	00,000,00,00
Anno 1634	Entertainment of the King and Queen at Merchantaglors-Hall.	3001287.12.08
Anno 1634	Christening the Duke of York	c00533.00.00
Anno 1639	A Cup of gold given the Q.Mother, & other charge	00 1000.00 00
Anno 1639	Charges of the Charter	002355.00.00
Anno 1639	Given the King	010000.00.00
Anno 1635	Composition for Package and Scavage	004000.00.00
Anno 1639	Composition for London-Derry	012000.00.00
Anno 1639	To the repair of Pauls	00.00 00.00
Anno 1642	Entertainment of the King and Queen	001786.00.00
	For Building the Bridge	co6400.00 co
	For Ship-money, and letting out Ships at Sea	017218.00 00
	By Gists and Rewards to Officers for 20 years, at 1200 l. per Annum	024000.00,00
Ourre, What authority the Court of Aldermen had to give fach gifts O71739.14 of		
	By leverall bad Debts	071739.1401

Ordinary.

Charges for Marshall Causes for twenty years
For Interest-money paid 20 years, at 6000 s. per annum
120000.00.00

By delivering up of Bonds to be Cancelled by Act of CommonCouncell in 1640. to severall Persons for money lent them 0a:
of the Chamber 20. years before about 30000. s. Principall
050000.00.00

in all with Interest

A 2

For Officers standing Fees for about 20, years, at 1400 l. per annum 028000.00.00.

For Workmens wages for 20, years at 1000 l. per annum 020000.00.00

Stuff for Reparation for about 20, years, at 1600 l. per annum 030400.00.00

The totall sam given, lost and expended for about 20, years, is

455148.11.02

Present,

Angast 26.

Mr. Sheriff Pack
Mr. Ald. Chiverton
Colymputering
Mr. Cole.
Mr. Barbone
Mr. Dallifon

Mr. Ald. Titchborne
Mr. Ald. Hayes
Mr. Gibbs
Mr. Bolton
Mr. Adams
Mr. Manton.

Those good Men being very sensible of this horrid abuse of the City, that the CHAMBER, which bath been esteemed like that among the Romans, a Sacred Treasury, for safety and pitying the Orphans crys. And searching how the City came to be thus Bankrupt; It was found that the chief Ossicrs had been very faulty; and thereupon it was considered how they were Elected; and there arese the Cuestion about the right of Electing the chief Ossicrs of the City. And it came into debate whether the Livery-men ought to be the Electors, as now they are. Thereupon the Companies of London Petitioned the Conrt that they might continue their Elective power: And divers Freemen of the City petitioned for the abolishing that power of the Liveries or Companies: the Petitions are these.



To the right Honourable the Lord Major of the Citie of London; and to the right Worshipfull the Aldermen his Brethren, and the Commons in Common Councell assembled.

The humble Petition of the severall Companies and Societies of the Citie of LONDON.

Humbly sheweth,

Hat whereas it appeareth, That heretosore for divers L yeares, many great differences did arise within this Citie, touching the election of the Lord Major and Sheriffes, to the great disturbance of the peace thereof; the said Elections being made divers and severall wayes, and with continual aiterations and often diffurbances, viz. in the feventh yeare of King Edward the third, by the Major and Aldermen together, with the most sufficient men of every Ward, in the eighth yeare of the faid King, as the Kings Proclamation then commanded. By the Alderman, and the most discreet and ablest Citizens of the City; In the twentyeth year of that King, by the Major and all the Aldermen, and 12, 8, or 6, of every Ward, according as the Ward should be great or smal, of the richest and wifest men of every Ward: In the fiftieth year of the faid King, by a certain number of the good men of the several Mysteries (their Names being certified by the severall Companies.) In the eighth year of King Richard the second, by the Commoncouncell, and the most sufficient men of the City. In the ninth yeare of that King, by those as should be summoned of the most sufficient men of the Citie, or of the Common Councell. In the seventh yeare of King Edward the fourth, by the Genegall Councell, the Masters and Wardens of every Mystery

of the Citie comming in their Liveries; and by other good men, especially summoned, and so the said unsetled Elections continued with many disturbances) untill in the 15. yeare of the said King Edward the sourth. That the same Election was setled by authoritie of this honorable Court of General Councell, by an Act then made, That the Master and Wardens of the Mysteries of this Citie, meeting in their Halls, or other sit places, and associating with the good men of the Company, clothed in their last Liveries, should come together to the Guild-Hall of this Citie for the election of the Major and Sherisse. And that no other but the good men of the Common Councell of the Citie should be present at the said Elections; which course and custome hath been ever since yearly used and continued, to the honour, peace and happinesse of this Citie, and the well setled government of the same.

That the said Companies in obedience to Parliament, and for the honour, service, and safety of the Common-wealth and Citie, and in their good affections to both, have from time to time hazarded their persons, exhausted their meanes, and freely undergone all services, taxations, and charges imposed on them. And that so great a part of the government of this City is now settled in the severall Companies, that if a disturbance thereof be made, it may be seared in time to bring a ruine up-

on the whole.

And forasmuch as the Petitioners are given to understand, that there is an endevouring to deprive, and take from them, that their ancient & lawful right, for the election of Lor Major & Sherisses, which for neer two hundred yeares together, they and their predecessors (the Livery men of the severall Companies) have lawfully and quietly enjoyed, as belonging to them, without any question or disturbance.

Their humble desire and request therefore is, That this Honourable Court will be pleased to take their just cause into your serious consideration, that as they are for the most
part the ancientest and most able Citizens of this Citie,
and doe undergoe (as alwayes they have done) the greatest part of the charge, and service within the same; so
they

they may not be put from that their right of election, as they and their predecessors, Livery men, have (without alteration or disturbance, lovingly and peaceably) held and enjoyed ever since the said Act of the 15. of Edward the fourth, being neere two hundred yeares, as aforesaids or be discouraged from bearing charge, giving attendance, and performing services, as they have aiwayes done, and performed for the honour and good of thu Citie. And they shall, according to their duties, pray, &c.

Tho. Chamberlain? Mercers.

Samuel Harsnet, Grocers. William Hulme.

Francis Pecke, Drapers.

Tho Lusher. Fishmongers. Gyles Baggs.

John Terry. Goldsmiths.

John Garrard, John Southwood. Skinners.

Geo. Alpers? Merchant-Rich. Orme. S Taylors.

John Green, Haberdasher: John Redding, Salrer. Rob. Gravenor, Ironmonger.

Wil. Feild. Wintners.

John Milles, 2 Cloth-Edward Chard Sworkers.



J. Sadler.

To the right Honorable, the Lord Major, Aldermen, and Commons in Common Councel Assembled.

The bumble Petition of divers Freeman; Inhabitants of this bonorable City;

Hat whereas the Ancient Liberties of the City did admit only Freemen of the same, to have his Vote in the choice of the Supreme Magistrates thereof: The imposition of Governours upon a People without their voluntary Election, importing the prevalency of meer Tyranny and slavery; And whereas the Livery-men of each Company thereof not chosen either by the City, or their respective Companies, and therefore not Representees, either of the one or the other, have for many years past, imposed such Supreme Magistrates upon the same City as they pleased, without the suff rage of the Freemen thereof, either by themselves or Representees chosen for that purpose. And lastly, whereas it hath pleased the Parliament of England to impose several Protestations, Vowes, and Covenants, upon your Petitioners, to preserve the Just and Native Liberties of the Subject, the price of much Blood and Treasure spent in this Nation, to recover and preserve the same; and for which end, your Petitioners humbly conceive this Court hath been Constituted, and sworn upon the election of the Representative Members thereof in their several Wards:

The premises considered, the Petitioners humbly pray, that by an Ast of this honorable Court, such a competent number of Representees may be annually chosen by the Freemen of every Ward, in their respective Wards, who together with the Common Councel-men, may be authorized to choose the Supreme Officers of this City ennually for the time to come. And your Petitioners shall pray, &c.

These were referred to a Committee, & Counsel for the Companies there heard, And Mr. Price in the behalf of the Freemen: from thence it was referred to be fully debated before the Lord Major, Court of Aldermen and Common Councel. And on Saturday the 14. of December, the Court being sat a Guild Hall, the Companies brought for their Counsel, Mr. Maynard, Mr. Hales, and Mr. Wilde, Gentlemen most samous in the profession of the Law; and the Freemen (besides Mr. John Price) had prevailed by much intreaty, with Major John Wildman, as I am informed, without hopes of Fees or rewards to plead their Gause; and so the debate begun as followeth.



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Mr. Price.

My Lord,



Only crave leave to speak one word in the behalf of my self; for I acknowledge my self to be but weak in the knowledge of the Law; and I therefore unable to withstand those Gentlemen of the long robe, come only as a Citizen of London, to render a reason of my subscribing of that Petition that was presented unto your Honor and this worshipful Court; And I hope you will not judge otherwise of my ap-

pearing here at this time. We began the last time to speak of it, to vindicate it to them that opposed us herein; And they being the first that spake then, we desire that they may likewise begin now, and then with your Lordships favor, we shall reply to them; for my part, I thought there had been an issue put to the business, and little thought had I to appear any more about it.

Mr. Recorder.

They that oppose any thing that is setled, to the end to have it altered, they usually begin first to shew their grounds or Reasons in all Courts of Justice.

Mr. Mainard.

The intent of our coming here, is not to introduce any novelty, but to maintain the ancient priviledges of this Famous City, under which it hath for so many hundreds of yeers flourished, in all Happiness the earth affords, with Peace and Plenty.

And therefore we conceive we shall not need to produce any arguments to defend our cause, but to answer the objections that shall be made by such that do oppose us in the injoying our right, alwayes presuming that where the possession goeth, there the right is; and therefore if they on the other side have any thing to object, we are ready to give answers to their objections.

Mr:

Mr. Price.

We hope we are before such men as will not take notice so much of the persons as of the arguments that are brought on both sides; And therefore my Lord, I shall begin to proceed where they please. The last time this business was under consideration before the worshipful Committee to be heard, the business was driven, as I conceive, to this head by our Opponents, to know whether the thing desired by us, be in your power to grant to us; And whether the things desired by them, were in your power to deny them.

They pleaded by their Councel, that they maintained their priviledges by right of custome, so that it was argued that the Law of Election was not

in this Courts power to give.

So that your Lordthip and this Honorable Court are by them made not to much as Judges, much less Parties.

Mr. Recorder.

Mr. Price takes it for granted, that all this Court understands the State of this Case, which they do not; and therefore I desire the question may be rightly stated that is to be disputed upon, otherwise you will spend much time and run into consusion, and it will be impossible for them that hear you to understand the business; so that I desire the Question may be stated and the matter of Fact agreed upon.

Mr. Price.

My Lord, I had thought to begin where we left the last time; and the question then stated, was reduced to this short point; Whether the right of Election of the chief officers of this City did belong to the Livery men of the several Companies, with the Lord Major and Court of Aldermen, by vertue of a Law of this Court, or by vertue of custome.

Mr. Recorder.

I beseech you let it be clear what you go upon.

Mr. wildman.

My Lord I amhere desired by many Free-men of this City to appear in their behalf, to inforce a Petition of theirs delivered to this Court, and they also produced to me a Petition preferred by some others in opposition to theirs; And as I conceive, that noble Gentleman Mr. Recorder desires that which is very requisite, that is, that the question may be rightly stated, and so the arguments produced on either side; now I conceive the question is this, Whether the Wardens, Assistants, and Livery men of the severall Companies of this City of London, ought to have the Election of the Lord Maior, and Sherists of London, or whether the Free-men in General by themselves or by their deputies have the right of that Election.

City Counsell.

The question cannot be collected from the Petition, which prays that the people of the several Wards where many forraigners inhabit, may chuse the Lord Maior.

(3) Mr Wildman.

My Lord, I believe those Gentlemen endeavor so to state the question, that they might make the Court believe that we would split our selves upon that Rock of popular confusion; but we shall endeavor to avoid that clamor. We conceive the question to be this, Whether the Masters, Wardens, Assistants, and Livery men of the several Companies, of right ought to Elect the Lord Maior, and the Sherists of this City; Or the Free-men of this City by themselves, or by their deputies. It will be concluded on both sides, that the Lord Maior and Court of Aldermen with the Common Connsel men may have a right in the Election.

City Counsel.

We say the Lord Maior, and the Aldermen and the Common Counsel, and the Masters, Assistants, and Liveries of the several Companies have the right of the Election, and possession of that right.

Mr. Price.

The question is, whether the Election, as it is shall continue, or not continue; we deny not that the right of Election doth belong to the Wardens and Livery men of each Company with my Lord Major and Court of Aldermen. But the question is, whether it belongs to them upon such grounds as are unalterable by this Court; if they are unalterable by this Court, let them shew by what Law; if they are alterable, we are then in a fair way to have one Petition granted.

- Mr. Mainard.

There is nothing pretended by the Petition that is endeavored to be made the question. They do complain in their Petition, That this government which you have so long injoyed in this City, is an Impession of Tyranny and Slavery, and that imposed; when I came first hither, I thought I was to speak to matter of Right, but they decline that, and speak to point of Crime.

Mr. Price.

It is true, these words of Tyranny and Slavery are in the Petition, but they are with a Parenthesis. I desire the Petition may be read.

(The Petition was then read.)

Mr. Price.

We say that the imposition of such and such things is flavery; but it is not in relation to this Court, but in answer to their Petition who call it in their Petition their ancient right; if it be their ancient right, let them shew by what Law; And I conceive the Parenthess is only in Relation to that expression.

Mr. wildmen.

I humbly conceive (my Lord, and Gentlemen) the thing in question must be collected from the prayer of both Petitions; the sum of the prayer of one Petition is this, that the R epresentatives of all the Wards may (as of right they ought) elect the chief officers of this City.

(4) Mr. Recorder.

I think, the business before you, is to come to the question in hand; and Thumbly beg, that for expressions on both sides they may be wholly waved; and if you will not speak the question, that you would agree of it Mr. Mainard. In writing.

I suppose it is conceived by all what we both aim at. I shall be a suitor that those Gentlemen may go on to matter of argument, and I shall speak

what I am able.

Mr. Wildman.

May it please your Lordship, to let me pursue the Recorders motion; Wa humbly conceive that the prayer of our Petition must direct us to state the question; we pray no more but this, that the chief Officers of the City may be chosen by the several Wards in their Representatives annually. We do admit that the Lord Maior, the Court of Aldermen, and Common Counsel may have right of Election, because they represent their Wards; but we pray that our right in Electing, as we are Free men, may be restored to us. Mr. Hales.

My Lord, There's no officers of any Corporation in England, but are by usage or Charter; and if these Gentlemen be about officers, their question is about the officers of a Corporation; these Gentlemen would introduce some new thing that hath not been heretofore used, and we defire to know upon what imagined pretence they would have it, and that they shew us the persons to inforce the thing they desire; otherwise why do they Petition?

Mr. Wildman.

My Lord, These Gentlemen would aviod the true stating the question, and engage us in Logomachia's, contentions about words; we would know wherein they oppose the desire of our Petition, to have the ancient right of the Citizens of London restored to them in the choise of the cheif officers of the City.

Mr. Mainard.

We deny That that you defire in your Petition is the right of the City of London. It is so far from being their right, that when they put that in execution, they loofe their Charter, and all their Franchises.

Mr. Price.

The question was reduced to this, whether it was in the power of this Court to alter what was then in custome, so that we shall not be lookt upon as adversaries to our Opponents, denying this Court their right of election; but if we make it good, that the custome was altered by you, why then we trust we serve you in so doing, if we prove it in your power to alter it now; and it shall encourage us to pray, and you also to give what we ask, if it shall tend to the good government of this City.

If the right of election belong to the Livery, it must appear by written Law, or by custome time out of minde; If by a Law, it must be by some Law of the Land, or by some Charter, or by some Act of Common hall, or Common Counsel. If it be by Charter, we must insist upon the termes

(5)

of the Charter, and expound the same by succeeding practices, and if this Charter granted in King Johns time be meetly declarative, we shall know what the custome was by the succeeding elections.

If you plead custome, we shall finde custome for many yeers, that the chief Officers of the City were elected by the Lord Maior, Court of Aldermen, Common Counsel men, and the Wards of the City, and not by the Live-

ry men of every Company as is defired by these Gentlemen.

To the 15. yeer of Ed. 4 they are in use from the 19. yeer of Ed. the first, which was 194. yeers. It was the practice of the City to choose by Wards so long; And the Aldermen, and Common Counsel men are chosen out of the Wards. Now for election of Maiors and Sherists by the Wards, we will give you but a place of that plenty we can give to that purpose, in the 19. yeer of Ed. the first 123 1. and in the 31. yeer of Ed. the first 123 1. and in the 31. yeer of Ed. the first out of twelve men of every Ward, were the Sherists chosen; and so was the Maior Thomas Blun chosen; the Sherists were chosen by the Lord Maior, the Court of Aldermen, and Common Counsel, and twelve men out of every Ward; And John Lincoln was so chosen.

And in the 32. of Ed the first John Blun was so chosen again; and in the 33. of Ed the first, John Blun was chosen the 5. time Major so, and so were the Sheriffs.

And again 1. Ed. the second, Peter Drove chosen Sheriff as before, and John Blun was chosen Major the fixth time; the first of Ed. the second, Blun was chosen the seventh time by the Lord Major, Court of Aldermen, & the Community which was summoned thereunto, which was twelve men out of every Ward; and in the 2. of Ed. the second, Bucler and Dover were chosen Sheriffs as before; the time would fail if we should speak of Palmer and Edmonds, &c. and many others who were chosen by the Lord Major, the Aldermen, the Common Counsel, and the good men of Wards.

At the 22 year of Henry the fixth, were present at election of the Maior all the Common Counsel men, and several discreet Civizens chosen out of every Ward; its true they are called the Commons and Community, and if that you look in the 21. of Ed, the first, the Community there is expounded to be the honest discreet, and wise men of the Ward; so that they were Representatives chosen out of the the Wards; but if it be objected, that besides these twelve honest discreet men of every Ward, there were certain other men that did belong unto this election, and surely it may imply that the Livery men did belong unto the election; surely, no; but by those dark expressions, must be meant the honest discreet men chosen out of the Wards with the Lord Maior and Aldermen, to whom it belongs ex officio.

The main argument was this; That the chief Officers of the City were to be chosen by the Lord Maior, and the Aldermen, and Sheriffs, and the Common Counsel men, with twelve men chosen out of every Ward that were discret men, that was granted; but that they were such discret men, as to exclude others, was denyed:

B :

If that these are the men, they must be distinguished from other men by another term then discreet men. Now you argue thus, that Livery men are discrete: & therefore the men that must chose my Lord Major, are the Livery men: as if you should argue, That the Lord Major wears a golden Chain therefore the Sherists are Lord Majors, because they wear golden Chains.

I Humbly effer these Considerations:

1. My Lord Maior, not the Aldermen chuse not any officers of the Companies; why should they then chuse any chief Officers of the City?

Secondly, The jurisdiction of the Major and Sheriffs extends to a Local Power; and by these Gentlemens pleading, Livery men, Free of this City, may live at York; and if they be at London that day my Lord Major is chosen, they may choose my Lord Major and the Sheriffs of this City, and yet live not under their Power.

Thirdly, The way of election we plead for, doth not exempt them from

being chosen by the Ward to elect.

Fourthly, Free-men of this City pay Shot and Lot, and are bound to affift the chief Officers of this City; but Livery men living not under

these bounds, are not under this obligation.

Fifthly, Again, this City is distributed by way of Wards; Questmen, Jury men, Constables, and Scavengers are all chosen by the Wards; and it is most necessary for the well Government of this City, that the chief Officers of this City be chosen by Representatives from every Ward.

Sixthly, If there be any miscariage in Government, The Citizens living in the City must be raxt, and pay any fine for misgovernment, and

therefore it is most fit they should have their vote in election.

Seventhly, and further, if any accident happen by Fire or the miscariage of one or more of the chief Officers, if it is fall out that the Treasure of the Chamber should be exhausted and miss-imployd, that the Orphans cannot have their portions, I defire to know who must be responsible for it; the Livery men of the several Companies, or the whole Wards, and every

particular man thereof?

And here give me leave to be heard with Charity: God knows my Heart, I speak out of Love to you all, and as press in Conscience; what I have to say, I am sure it is the whisperings, nay the Report of most, and I sear too true; That the cry of the Fatherless and the Widdow doth sollicite Heaven for vengeance, for the expending the poor Orphanes Estates; and we trust and believe, that your Honor and this Honorable Court, whose Faces, and Lives, and Conversations we so well know, that we do verily believe that your Hearts and Hands are clean from this pollution; but as we do believe, so we hope, that your Honor and the rest will take some speedy course that the blood of the Fatherless and the Widdow may not stick to these walls; Let our blood and Estates go before the blood of poor Orphans, that that may not one day be charged apon this City. I desire to be pardoned this digression.

(7)

I should answer some objections that are commonly made against this way of election that we desire: The first is this, That this will destroy the Companies, and so at last it will strike higher, to wir, the overthrow of my Lord Major and the Court of Aldermen, and so consequently all Government; for my part, I know not that Absolute among us, but did I know such a man, my Hand should be upon him as soon as any mans; I say let a Bear robbed of her whelps meet me, rather then a People without Government; the Magistrates power is my power, and is in him for my use, and for my part I am for the Majesty of Magistrates: for when we read of Kings, we read of Thrones and Scepters, and soft raiment.

It is true, though your chians are gold, yet they are chains as well as gold: and though your Gowns be Honorable, yet they are burdensome as well as Honorable.

But as for the business in hand, we speak not against the Form and the

beauty of it but let every Star shine in his own Orbe.

Let there be no confusion; let Wards have their dues, and let Companies have their dues; I want opportunity to set forth their glory and their excellency in their proper places. As for the objections of popularity and confusion, we shall answer them if they be insisted on.

Mr. viildman.

My Lord, I humbly propose no other end, but to inforce the Petition of the Free-men of this City: the question that was stated is this, Whether the Companies of the several Mysteries in the City, or the Free-men in the several Wards have right to choose the Lord Major and the Sherists. Now it rests upon us to prove, that the Free-men in their Representatives, chosen out of the Wards, are to choose; and we do affert this for a truth, That those, and those only that shall be actually chosen to represent the Free-men of the City of London, not excluding the Lord Major, Court of Aldermen, and Common Counsel, have a right to this election. And to make this right of the Free-men of the City apparent, I might according to the practise of some, urge no more but Common and natural right, those very soundations of Common Right which the Parliament have declared to us; I mean the first principles of just Government.

As first, that all just subjection of a People unto Governours ought to

proceed from consent of parties : or,

Secondly, that all officers or Governours are but trustees for the good of the People, and therefore are to receive their trust from the people, none having Powerunder God to invest a trust of Government in any but the people, nor to set the Bounds and Limits of the trust of several Governors; and this the Parliament hath declared to us, viz. That the original of all just power under God proceeds from the People.

And my Lord, I might infift upon it, that this very City and Common Councel in all things do acknowledge this to be the Peoples Right; For

abon

upon your election of your Representatives in Parliament, the Commissions you give them run in the name of the whole Commonalty of the City. And it is generally admitted to be the peoples right in all Acts of Common Counsel and other publick Acts, which run in the name of the Commonalty of the City, they are therefore supposed to do those Acts by themselves or deputyes : But, my Lord, I shall wave this, lest I should reduce all Government to an uncertainty, by dissolving it into the first principles, and so seem at least to run upon that Rock of consusion which those Gentlemen would have us split our selves upon; But it is no way our intention, and therefore I thall affert this proposition; I hat the Representers of the several Wards ought to chuse the Lord Major and the Sheriffs upon a Right declared by written Law; only I crave leave to premile, or to inform this Honorable Court, that those first Records that should make out the peoples right, are imbezeled, burnt or loft, there being no Record In your Treasury but since Ed. 1. For it hath been the practise of several Kings to purloyn the Records that they might with more facility incroach upon the peoples rights; As I remember it was an Article against King Richard the second, that he had purloyned and destroyed the ancient Records.

But my Lord, by Records that are extant, the Liberties of the Citizens of London appear to be more ancient then any Charter of the City thats visible to us; in the 9. Chap, of Nagna Charta it is said, The city of London shall have all bee Liberties and Customes she was used to have; so that there were Liberties and Customes that the City had before the great Charter of England. Now it is agreed by the Gentlemen of the long Robe, that the great Charter of England is chiefly declarative of the Common Law; And Sir Edward Cook in his second part of his Institutes upon that ground declares it for Law, that Any Law made by the Parliament it self, and contrary to the great Charter of England, and contrary to right reason, is voyd

of it self.

I suppose he addes these words [And contrary to right reason] to shew that he means only that a Statuse made against that part of the great Charter which is declarative of the Common Law, is null of it self; for the Common Law, being right reason, it cannot be supposed without a contradiction, that Parliaments should of right have power to make a Law against Right. Now the Liberties of London being confirmed by the great Charter, I cannot conceive that any other Liberties are there intended to be confirmed, then those words of the ninth Chapter of the great Charter do but declare the Common Law, and by consequence are unalterable; and any Law made against those Liberties of London either by a Power within the City, or without the City, is null of it self; now to make it appear that it was one of the City Liberties before the great Charter, that the Free-men should chuse their chief officers, we can go no farther

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then your Charter granted by King John, in the year (1215) 435. years since; that is the first Charter the City of London hath extant. And by that Charter tis said to be granted to the Barons of London yearly to elect a Major and Sheriffs, and the word Barons doth import no more then the Free-men of London; for then the Free-men of every port were called Barons, though since it hath been made a name and title of honor peculiar to those called Noblemen. Now I conceive it will be agreed by the Gentlemen of the other side that this very Charter was not the original of those Liberties of London that are mentioned there to be granted, but that it was only declarative, shewing what the Liberties of the City were; and here I must infer, that this Charter declaring that the Barons of the City (wherein every particular Citizen is included) should chuse the Major and the Sheriffs. this (I say) doth but declare what was the Com-

mon right of all the Citizens of London before this Charter.

I may then from hence conclude, that before the great Charter it was the right of the Citizens of London, none excluded, that they should chuse their Major and their Sheriffs and fuch a right as I crave leave to affirm to be unalterable, that is luftly fo; for being a right by the Law of nature, 'cis Superior to all other Laws; and other Laws are only so far right, as they agree with that; however I may more boldly say, that this Libertie of the Citizens of London being confirmed by the great Charter, cannot be null by an act of Common Councel; and I humbly conceive that it was not in the Common Counsels Power to make that act in the fifteenth of Edward the fourth to debar all but the Liveries of the feveral Companies to come to the election of the Major, and Sheriffs : for they could not take away the right of the Citizens declared by their Charter; and in the first Charter, and all others tis said to be granted to the Citizens indefinitely. to chuse of themselves a Major : and the Charter ought to be construed in favour of right, and so tis to be taken that tis granted to all the Citizens : and this their right is apparent by the use of it which is mentioned in all the most ancient Records of the City: there's one or two very clear to this purpole. The City growing great and very populous after their first Charters, found it unconvenient to nieet together, the Commonalty being very great: and therefore according to this their right which we affect, the whole City at a Common hail did make an agreement that 8, 10 or 12. of every Ward should be chosen by their Wards, and in their names and in their steads ele& the Major and the Sheriffs of the City.

As in the fixth year of Edward the second Lib. D., Folio 3, which if you please I defire may be Read, that you may not think I speak without

book. The A& was read.

And in the 20. year of Edward the third, in the year 1347, there is an A& of a Common Hall recorded, wherein tis faid that there gathered together on Simon and Indes day the whole Commonalty into Guild Hall

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London,

London, so that the whole Hall was full with the Communalty.

The Act read in those words.

And it is agreed that from henceforth there shall come the Major, the Aldermen, and also out of every ward of the City of London 12. 8. or. 6. According as the ward shall be great or small of the richest and wifest of every ward; and such 128. or. 6. with the Major and A'dermen shall intermeddle and shuse a Major and Sheriffs for the year following. I conceive this is sufficient to prove that it is the Citizens of Londons right to chuse the Major and Sheriffs of London; for accordingly they did meet together, the whole Body of the Free-men; and finding that inconvenient, the commonalty did agree at a full Hall, that such a select number should be chosen by every Ward and fent to the election of the Major and Sheriffs, as appeares by the A& that hath been read; & tis probable, that this was not the first time that fuch an agreement was made, but that this was made after the Commonalty had upon some occasion reassumed the power of electing to themselves; for according to this agreement it was the practice of the City of London for neer two hundred yeers before it was put into the hands of the Liverymen of each Company; in 19. Ed. the first, lib. c. fol. 62, the election of the Major and Sheriffs, is said to have been made by the Major, Sheriffs and Aldermen, and twelve men of every Ward.

In the 19. yeer of Ed. the first, Blun was chosen Maior of the City of London, by the Common Counsel and Aldermen, and by the affent of

swelve honest men of every Ward of the whole City.

My Lord, It is apparent that twelve men were chosen by every Ward. that did elect the Lord Major and the Sheriffs. And the very fame words are in the 31. yeer of Ed. 1. where Martin and Burford were chosen Sheriffs; and in the 32. of Ed. the first where John Blun was so chosen Malor, lib. C. fol. III. & III. and in the first yeer of Ed, the second fol III. Picot and Dury were so chosen Sheriffs. I humbly submit it to your Lordship, whether you will see these Records, I may quote more, as in the third of Ed.2.1.c.in fol. 113. &c. It was the continual practice from yeer to yeer, that the twelve men chosen by every Ward, did elect the Lord Major, and the Sheriffs; there is a whole Jury of witnesses, in the Records to this purpose. And my Lord, where this usage may seem to have ceased, because in other Records tis said they were elected by the Lord Major, Sheriffs, and Aldermen, and the whole Commonalty; we shall make it appear that this is meant the selected men of the Wards; though however those Records are clear for us : for if the choice was by the whole Commonalty, it was either by themselves, or these deputies. Yet we find one Record in the 21. of Ed. the first, lib. . C. fel. 6. where tis said, first that there was affembled the whole Commonalty,

(11) and then tis explained in these words, that is to say of every Ward the richest and the wisest.

The Record was read.

Mr. Wildman.

I produce this Record for this end, to shew that where the election is said to be by the Commonalty of the City, It is to be understood the select number of every Wards Representatives; for it is supposed every one is included; and therefore tis fald to be by the Commonalty. I pray my Lord observe these words in this Record, the whole Commonalty, that is to say the more able and discreet men of every ward. And to confirm this, if there be any need of it, we can produce another Record in 113 fol. libro C. Where election is faid to be made by the Commonalty summoned thereunto ; yet in Pag. 112. of the same, it is said men of every Ward did chuse: whence I collect that by the expression of the Commonalty summed hereto, is understood the twelve men from the Wards; so that it appeareth clearly in my humble opinion, that it was the practice of the City for neer two hundred yeers to choose by their Representatives, before it came to be the usage of the City to chuse by the Livery men of the Companies.

And my Lord, If it were needful to Arengthen this, we can shew by * Records that Parliament men were chosen by the Lord Maior, Alder . Lib. C. fo. 413 men, and twelve men of every Ward; these were the Representers of the Edw. L. Wards, that joyned with the Lord Major, and the Court of Aldermen in such elections; And the Commissions given to the Parliament men, are in the name of the whole Commonalty of the City, which admits they were all there in their persons or in their deputies, to chuse them, and give them their Commissions: else the Commonalty is abused in having

their names used in the Commissions.

Now my Lord, I shall take the boldness to conclude from all this evidence, of the Common Counsel of London, though I much honor their power, and would be infinitely loth to detract from it : yet my Lord I must crave leave to affirm, That it being the liberty of all the Free-men of London, by themselves or deputies, to chuse the Lord Major and Sheriffs; And this being confirmed to them by Magna Charta, as unal. terable: And all the people having declared at a ful Common Hall, that they had put it into the hinds of twelve men which were their deputies, or Representatives to elect the chief officers of this City; this my Lord being the Case, I say, I humbly affirm, that it was not in the power of the Common Counsel by that A& 15.E 4 to take away the Free-mens right, nor to say who should be the peoples deputies to make their elections, they 2

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they being by the people deputies themselves, & deputed to another power; So that my Lord, I now conclude that it was the ancient undoubted right of the Citizens of London by themselves or their deputies, to make their election of their Maior and Sheriss, and other chief officers of the City; and I conceive the Petition of the Freemen of the City of London, which I now endeavor to inforce, amounts to no more then a model humble claim of their Common right, that elections might for future be made by the deputies of every Ward, which was the ancient custome of the City before the great Charter; and all their Chatters, that of King John, and fince, say that the election shall be according to the ancient custom of the City.

Mr. wildman.

And if the King at any time sent Writs, or made Proclamations for quieting the elections when there was disturbances, and prohibited the access of people: Yet the more honest and discreet men of the several Wards are mentioned as bound to come to the election, and tis commanded that they chuse prout morises, according to their custome; and I conceive it hath been proved that it was their custome to chuse by the Representatives of every Ward. I shall say nothing for the convenience of this way of choice that I plead for, because we claim it as our right: and we expect that the Arguments against us will be chiefly from pretended inconveniences; and when those arguments are produced, we shall endeavor to answer them.

Mr. Maynard.

I suppose to satisfie your consciences what is the right in that which is indeavored by these gentlemen to be defended, which they have taken very great pains about, in collecting what hath been said to you; I shall endeavor Gentlemen in the first place to remove that which seemeth to lie in my way, and so come to that which I have to say in answer to what

hath been spoken by you.

The Gentleman that first spake, taking occasion to make an apology for his own unability to perform the work in his hands, he was pleased to say that which I conceive you do not believe; he would make as if he wanted parts, when certainly he shewed very great skill in the very entrance of the busines; and when the fact was but a little stated, he would have laid hold of you all, and so of making you Judges, he would have not parties; And indeed it is well that you are both Judges and Parties;

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they sald, and doubtless they are ingenious, that they desire you to proceed according as you should be satisfied in conscience, the which for my part I doubt not but that you will; there was much said how much it did behave you in point of danger; but what that danger is I understand not; but he tels you he urged it out of zeal; also he tels you much of some secret Abfolon; but for my part, I understand not what, nor who he means hereby; I will take no advantage of any mans affections nor inclinations at all; But the main which that Gentleman spake to the business in hand, was that he cited many precedents and records for the practice of what he now desireth may be effected; But truly I do extreamly much misunderstand those presidents and Records that he produceth. If that they are

not as full against them, as any thing can be said.

I shall first offer the weight of their reasons which they urge without president; which deals most candidly, you shall judge; for I shall involve the former in the latter, Mr. Price in Mr. Wildman; and first that that was urged by Mr. wildman by way of reason was this, that it is a principle of Common right, that just subjection cannot be but by assent, and there is no way whereby this affent may be but this he speaks of. I do deny his Major. I shall deny his first proposition; there is, and may be just subjection without affent; and certainly the experience of all generations in the worldevidences this truth, that there may be just subjection without affent; and there be but few governments but are established without assent: it is true, where the affent is, the eafier is the subjection born. But what doth he mean by affent? a virtual or personal assent? if he means personal affent, why then when should there be any such assent? but to say no man nor people shalbe governed but by affent, we deny; for is not a lawful conquest a lawful title in some Cases? the matter is not to make the business impossible without affent. But to that which they deliver, I can no way affent. He tels you that the several Wards must have Representatives to elect the cheif officers of this City, and he tels you the first Records were lost and imbezeled; But it is not right placed.

But Gentlemen, what doth he conclude? he tels you there were Records; and he tels you without all question, if that they were extant, they would speak for them; although he nor none else know the contents of them. But saith he, the Liberties of London are Ancienter then the great Charter; and the Liberties of London being confirmed by that Law; therefore any Law made against that, is voyd and null; and therefore the Common

Counsel cannot change them.

C3 Mr.

Me. wildman.

I said that wherein the great Charter was declarative of the Common Law, i.e. right reason, it was unalterable; and any Liberty of London of that nature, such as is that we now plead for, ought also to be unalterable.

Mr. Mainard.

You said this, that our City Libertles are ancienter then Magna Charta, and that they are confirmed by Magna Charta, and therefore cannot be

altered by any Law, much less by the Common Counsel.

I shall appeal to the whole Auditory for the Argument; then what ever Magna Charta hath confirmed, cannot be by any Law repealed; and when this comes to generals, this may be of very fad confequence; I see Laws are edged tools; those that understand them, make good use of them: and those that do not understand them, will finde that they are sharpe, and will cut; we all know that there were Bishops and Kings by the Common Law, and Magna Charta, and yet they are changed, and justly changed by the Parliament: and you will not say that that is void and and null &c. Now he comes to the presidents which I did tell you before, and hope to make it clear, that the presidents cited do otherthrow that which they bring them for, 'I shall offer unto you, that which according to the best of my Judgement, is matter of reason, and proof of that which hath been affirmed by them. I shall not begany favor from you. In regard I speak for that which is dear to you all, which is the peace, prosperity and well Government of this famous City: we shall first lay before you the fact, and from thence proceed to the question. From the fifteenth of Edward the fourth, there hath been a succession of Election this way, and that cannot be denyed by any, which is nigh two hundred yeers. If any man lay claim to any thing, he either doth claim of right, or prescription.

Now if a man should come and put you to prove your right, when you have had possession of an estate 150, yeers past, you would think your self hardly dealt withall. Now we shall prove that there hath been 180, yeers possession of election this way, and it hath by the blessing of God brought with it peace, prosperity, and plenty to you; and I hope you are not so ungrateful, but to acknowledge it; but it is told

told you, and much pains is taken to perswade you by these gentlemen that this must be removed; but under favour upon little grounds.

You see here are but two, and these two differ in what they would maintain. Now all Truths stand one with another; saith one, this is lawful; saith another, this cannot be changed; either you must conclude the present is lawful or unlawful; if lawful, why is it defired to be changed > but judge you the consequents of this; if you deny this way now establishe to be lawful, then the whole City of London for above ewo hundred yeers never had one lawful Maior, and all Actions proformed by them may be questioned. Now in the fourty one of Queen Flizabeth, there being a difference in the City about election of officers, all the Judges of England were caused to meet together about this very thing; and it was expresly resolved by them all, that such elections were bwful, and Lordon is named in the resolution; and it is said they found it a question of very great advice, and those Judges were very grave, pious, and godly men, for some of them, as Popham and Anderson, and Pyriam also a samous man; so that gentlemen, fifty yeers agoe this question was on foot, and all the Judges of the Land did then give their resolutions, that it would be matter of very great inconveniency to alter it, and they gave it as in right of Law to belong, as it had been before; and if it be not lawful, then this City hath forfeited its Charter, and is lyable, when they that are above in power and authority at any time shall be pleased, to be questioned for it; I do apprehend that the foundation of your right doth not depend upon any Charter; those Charters you have, are matter of confirmation, and not Charters that do give you your right; the ancientest Record that you produce, is from King John, but the first yeer of Richard the first is the utmost bounds of memory. If that it be not by prescription, why then are many customs of the City void? for there are many customes and usages for which there is no Charter, nor is it possible there should be; and therefore it must of necessity follow, that Maiors was time out of mind; and the truth is, Maiors were in use before the Charter; they were indeed called Portwards and Portrifts; but the name was changed in Richard the first stime, and from thence they were called Maiors, and the Charter was granted in the name of the Major; so that though the officers name be changed, it is the same officer still, the power the same, but not the name, if they were not by custome; for you must know what is by custome, is not by Charter, and what is by Charter is not by custome. Now then what is the Charter? the Barons of themselves may choose a Major; this Charter being of this Antiquity, it shall be construed according to usage, and that is a rule in Law, and that is your confequence; for if we shall be forced to finde out the meaning of words, you will be to feek; for Citizens In those times were called

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Barons. But we shall now come to, answer their objections, and to make those objections we have to say on the other side. Those Records that they produce, fay, we shall all choose, and if that you, hold your selves to the letter, then you are tyed to an impossibility, that is every Cittizen, none excluded, and then you will reduce your felves to an absolute impossibility; but say they, we would have a Representative made out of every Ward, and To they with the Major and Court of Aldermen, should choose the cheif officers of the City; but this doth no more stand as an objection against the present choice; for if you look to the words of the Record produced, it doth not bear it; for doth the Charter grant you any such Representative ? Taking it for granted, the right is founded upon Charter, and not upon custome : and I take it to be by ancient custom before the Charter, or else the Charter would not bear it, that they should choose a Major, and not telling them how and when; for this general grant was made because it was their custom; but an objection is made, that in this way which we now choose, all do not choose. But I answer; all do choose, though not by their own votes; you say, when did we give our right to the Livery men to give vote for us? I answer a man feeth with the eye, yet we say the man feeth; a mans hand moveth, but it is the man that moveth it; so though every part doth not do every thing in the City, yet the whole doth every thing, and the City doth choose, though every member thereof be not at the choice; so that the question is whether you do believe this was lawfully done by those that do it. Now if Lawfully, why then they are the Cities Representatives; as for example, for the Parliament, every member thereof cannot give his vote for the passing of all things: for many times, many of them are in the Country when many Acts are past, and yet we say the Parliament doth it; as in election of Parliament men in the Country, the Writs run, that the people shall choose; and yet we all know that none choose but such as are Free holders, although there may be many as good men as Freeholders, yet they have no vote : and yet this act is accounted the Act of all the Commons in England, though they come in but by some parts, and some have no vote in the choice of them; we may not depart from this; for by this we hold all we have; so if this be a lawful choice, why then the Law supposes that where there is a continuance of a lawful possession. there all lawful meanes is supposed to maintain the possession.

If that all the City should meet together, and set down this Order; if that it be once selled, that for ever hereafter the search these shall chuse; then you make those your Trustees, and it supposeds such an ancient custom was. And truely, Gentlemen, the choice as now it is, is no otherwise: for the Aldermen they are chosen by the Ward, and so are the Common Councel.

I will put you a Cafe, which, to my understanding, is like this. In the 28 yeer of Edward the sirst, there was a Statute made, wherein the King grants to the People, that they shall chuse the Sherists, or conservators of the Peace; whenas there was nothing more clear, that none but the Free-holders should chuse them. Mark the Parallel; and yet this is an Act of Parliament that hath its beginning at that time: and yet that is accounted the choice of the People.

I fail now come to examine that which I told you of, the prefidents which they produced; which I was bold to tell you, that every one of

them made against them.

That which is defired is, That every Ward should chuse them Representatives, and that those Representatives, together with my Lord Major and Court of Aldermen, should chuse the chief Officers of the City. And in proof to this, I shall appeal to your Memories, and to the words of the Prelidents, whether one Prelident that they produce. prove, that those six, eight, or twelve men that were summoned to chuse, were chosen by the Ward. You shall see what a pass you will come to, if you go according to their meaning of those Presidents. Says the fift P. efident, They were summoned from each Ward. They did not fummon themselves. Pray then who summoned them? Why it was the Major that summoned them: the Major summoned whom he would; sometimes fix, sometimes eight, sometimes twelve, at his pleasure; and he summoned sometimes the Honest men, sometimes the Rich men, and sometimes the Wise men; and they came and mide election of the Major. There is not the least tittle in all the Records that they produce, that they were chosen by the Ward. It is one thing to fay, Twelve men that were summoned from such a Ward, came; and another thing to fay, Twelve men that were ele &cd by the Ward, came and chose: and yet so it is said, that at that Convention there should be fix, eight, or twelve of the Honestest, Wiscot, and Richest men of the Ward chose.

If that there should be such a Summons sent out, That all the Richest and all the Wilest of such and such a Ward should come, what a kinde of Summons is this! and how shall you judge of these persons? &fc.

But it appeares the Major sent out his Process and summoned them, and so a Law is made, that none should come but those who are thus summoned: as it appeares, in the election of Blunn, Major, and all along no mention made of electing the persons, but summoning them to appear.

Other-

(18) Otherwise this must be understood to be the Common Councel

of the City of London, for they have had I veral tearmes; and a man may very well fay, when the right is in the Commons to do this, or that, that when it is done by their Trustee, it is done by the Com. mons. Now the Common Councel are often so called, the Commons of the City. Now how will you understand that these fix. eight, or twelve men were onely chosen for this end, To chuse the "2 Edw. I. chief Officers? There is nothing less in the * Record: onely Muster Wildman fancies that the Ward meet woon this occasion, and el. &ed them; and then the Major should summon them. So that, I say there could not be stronger presidents then whit they have produced, thee make against themselves. I shall now conclude what inconveniences would follow in point of Law, in case they had their desire.

> Secondly, You pur your selves upon this hazard, that if you part from that which is warranted by Charter, and warranted by the poffeffion of two hundred yeers, and warranted by the Resolution of those ewelve Judges; I fry, Then you will forfeit your Charter which you

have so long enjoyed.

fol.41.

Thirdly, It will be inconvenient to you, in regard of your Liberty in the Ancient Liws of England. No man dwelt in any Ward, but was fworn to appear upon all Summons to Courts.

Your Wards have Courts of Inquest: and over them, you have the Sheriffs Court; and this Court, which is above that: and no man can

line out of those Jurisdictions.

Your Wards in the City, are like your Hundred-Courts in the Country. And herecofore, in all Wards, every one was to be summoned; assoon as one was twelve yeers old, they were to be summoned, to

give an account of their life.

In a Ward, you know, there are many that are not Free-men; and there are many Free-menthat have their habitations abroad. Now if you admit of all to come to choice, why then Forreiners that live in the Ward, shall have more freedom then Free-men which live out of the Ward; and it may so fall out, that in some Wards there may be more Strangers then Free-men. So that in this way of choice by the Ward, oftentimes those that are Citizens may be excluded, and those that are Forreiners may be included.

But you may fay, We will exclude those that are not Free-men from choice. But was there ever any such thing done in this world?

The next thing that will follow it, will be this, Popularity. Genelemen, you must remember that I told you that the Ward consisteth of every inhabitant thereof: and when you are in such a populous place as this City is, and when that they shall all meet together, what breaches of Peace and Insurrections may come ! I speak not of that which is without prelident: and luch Meetings cannot be, in any wife mans apprehension, but this will tollow. Bas

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But truely I do not look upon this is the greatest danger; but there is this in it also: The foundation upon which this is grounded, which the Dectinal part of the Law, in this case is undermitted, and the example of such a thing as this. For after this example, truely all the Government or Corporations of this Kingdom will receive such shakings, as I blush to mention, when they shall consider the Anciest Government of this City, so backs with Lawful authority, put into a new way. There is not a more dangerous thing, in my understanding.

Heretofore, when the Prerogative did lie upon you, you did flow your felves constant to your own Interest. Truely, this is a meer designe to betray you; and it will slake you all to pieces, if you look not to it: for it is an earth quake under you, and will blowe you up.

As for that Principle M. W. afferted concerning just Subjection, because he left ir, left he should reduce the is to an uncertainty, I shall fay nothing: ently I shall briefly lay cown 1. whe ein we are agreed, 2. wherein we differ.

M. Hayles.

My Lord and Gentlemen,

First, It is agreed to by them, that the power of the choice of my Lord Maior is not meetly by Chatter, but by Prescription too; That the Charter is a Confirmation, and not the Original: For we do say, that there was the same Office of Maior many yeers before King John: so that your Officers of the City have been time out of minde, and not barely by the Charter. And if it were not so, that would overthrow all your Courts and Franchises.

Secondly, This is agreed to on both fides, that without all question the Common Councel shall have a Vote in election of the Maior: in this we agree. But the Dispute is, Whether or no the Livery and Assistants of the Companies shall come in with their Voice, or whether there shall be a new Device, that the Citizens shall meet and chuse twelve men of each Watd; as they do in the choice of the Com-

mon Councel; and so they shall elect the Major.

Thirdly, Weagree in this, that is, that the way of Election hath been by the Major, Aldermen, Common Councel, and Livery-men, and hath been used for about One hundred and eighty yeers. And they

affirm that this was grounded upon an Act, of Common Councel.

These three things are agreed unto on both sides.

But now the great heat is against the Livery-men; and the reasons

they give against them, are these three.

First, They argue from point of inconveniency. That is, because the Maior and Aldermen, do not choose the Masters and Wardens of the Companies, therefore they should not choose the Maior, and Officers of the City.

The second Reason they give, is in point of right. I shall say

No more of that then what hath been said already: You have had a choice of Maior, and Sheriffes, for neer two hundered years, by the Aldermen, Common Councel, and Livery, to argue election out of conveniencie that you have been under two hundred yeers. To aller the it upon M. Prifes epinion, I think you will not, you having sound it

every way to convenient and profitable to y u.

But if so be there be any inconveniency in this, a postular cheice will be very much more inconvenient. I pray consider but this one thing: If so be the people should come hereaster, and dispute the validity of this choyce you plead for, and say, What so you tell us of Representatives I we will all choose our solves; What imaginary grounds can there be to say, These scares but imaginary? How will see, when it will come to be thus? They will say, We will go and chuse a Maior our selves; there is nothing of Right in this, but meerly maginations: if you allow of ten, or twelve, they may say, Why not sity, or a hundred, or two hundred? But for point of right, you have heard what harh been said upon these three heads.

But faith M. Wildman, the foundation of all power is in the People Fift: If that shall be a ground to let in all the generality of Citizens into an actual choice of Officers, will there not be the same reason for Apprentices, and Forreigners, to plead for Votes in your Election? A Forreigner is under the power of the Maior, and Ap-

prentices live under the command of the Major.

The next Reason is, they would endeavour to prove that this course of Election they plead for, was heretofore usual. I shall say but two words to that.

First, they insist upon the Charter, and that of King John: the

words are, They Shall Eletta Maior.

And they produce some Presidents of the one and thirtietn of Edward

the first, and the first of Edward the second.

I shall repeate one word or two of that my brother Maynard omitted. First, you will remember we proved a constant usage of neer two bundred yeers in this way of Election; and their pretence is but for a few certaine yeers, that the choice was in that way which they desired.

A second thing shewes their pitiful mistake. The Common-Councel are agreed to have a choice: why if they examine it, they will finde, the Common-Councel are men chosen by the Ward. They do finde here and there mention made, that the Maior was chosen by the Aldermen, and about six, eight, or twelve men summoned. And here they think, that they must needs be Representatives chosen by the Ward; whenas in truth, these might very well be the Common Counces of the Ward.

I think there is nothing left for me to say to that. What I stall offer, shall be out of Record, and never mention the conveniencies nor (21)

inconveniencies. I shall read the Records unto you, that they produce; and I will take hold of some words of them. The words are these. There shall come out of every extarb these, eight, or sky men, according to the greatness of the extarb. And according to the Wards of London the Common Councel men were sent, some more, and some less. And this is very obvious, that where there is such a description of the number for each Ward, there must needs be meant the Common Councels. So that of needs firly these words extend to the Common Councel-men, or else the Common Councel must be excluded.

And again, from a Record Edw 3 they argue the Commonalty to be the twelve nien, when they are the Liveries. So they mistake in their

application.

We are not to dispute who may alter the Custom: But they say, This

is your Custom, and they say That is.

We will admit, that that which is by a Fundamental Law or Charter, cannot be altered by an Act of Common Councel. But if your present choice be not lawful, then all burgains made since Edw. 1. by your Officers, are void, and you have no power to judge: for you are no Common Councel.

M. Prife.

I humbly conceive I may answer him to what hath been objected M. Wild against what I delivered according to Reason. You say that I did de- spake last clare that just subjection cannot be but by assent. Under favour, that for the custwas not offered by me. But I offirm, that just subjection cannot be Liveries, to but by right of assent.

Secondly, They urge that we differ upon our grounds. The one purpese as saith that it is lawful, the other saith not. And the Reason is, because the other they that grant it have no power to grant it. But for my part, I did not He had no

affert any fuch thing.

As concerning the resolution of the Judges that you so much speak ment; onely of; In some cases it is considerable, and in some cases little weight is an observate be given to their Resolutions. For we all know, in the case of Shipmoney, they gave in their Resolutions, that it was according to Law. 28 Edw. 1. And we also know, that this was afterwards condemned by the Parliament, to be contrary to Law, and Illegal.

Secondly, The Resolutions of those very Judges you so much ex-

coll, doth no way refer to the business.

We off reo grant a select number may lawfully choose; but the Liveries are not so. And the opinion of the Judges onely say, that a select number may choose.

Thirdly, Whereas it is said, the Charter is Declarative,

Tothat I Answer,

The Practice succeeding doth declare what the Custome then was 3 and we have no mention of any Masters, or Livery men of Compa-

pake last for the City-Liveries, to the same purpese as the other: He had no mew Argument, onely an observantion from 28 Edw. 1.

Ditt.

(22)

nies in Election. And for exp. fiction of the Charter, if that we tie you to the Le ter of it, yoursey we tre you to an impossibility. But we onely ylead for the Represent two of Wards, to chule not all personally; and therein is no impessi inty.

And befides, in the one and twentieth of Edward the first, it is ex-

Fol. 6. E.C. pounded what was mea, they those words. We proved the Charter give it the City, and the City gave it the Common Councel, and the Common Councel gave it to the L very; and if they gave it for good, if they finde it prejudicial ye may take it away againe.

> Whereas they fay that by the Number of fix, eight, or ter, is doubtless meant the Common Councel; How do you prove the Common

Councelimen did confift of so many in every Ward?

And then for the Exposition of the Ward Moat: Whereas they lay some Forreigners may chuse; yea they may infer as well, Forreign. ers may be chosen.

To that I answer, many men may be summoned together about bufinels, and some of them may have a right to some things there in

hand, and some may not.

We have a president, once one that was no Freeman, was chosen to be a Sheriffe of London; and because he was no Freeman, therefore the Election was Null. So though it be granted, that every particular man of every Ward, be summoned to come to the Ward-Moat; yet it doth not follow that he hash a right to all the work to be done in that Court. Again, for the Popularity and Consequences which they fo much plead, that will every whit reflect upon this honourable Court. For every member of this Honourable Court is chosen by that party which they call Popular: therefore let them speak of that till to motrow morning, all will reflect upon you. That which is now plead. ed for, is Custome.

Thirdly, That this hath been the Practice for a hundered and eighty years, I do not deny; but I do not grant it. Suppose we do grant it, and yet we bring a Practice for within twelve years, that was another Practice's whether an intermission of Practices do not rend that which is called Custome, I humbly offer. For my part, I did not offer the Argument of Conveniency in R lation to the present Practice; but according to this Principle I argue against the unreasonableness of this Priviledge, that there Gentlemen would have to this right, and not by Authority of this Court. Against they fay, that if Election be by the Ward, men will plead thus: Why not fifty or a hundred, as well as fix, eight or twelve?

Again they urge, that Livery men were called the Commonalty; but

how aprly, and how fitly, we offer unto you to determine.

Major

Major WILDMAN's Reply.

Ay it please your Lordship and this honourable Court to give me leave to make some Answers to what the learned Gentlemen on the other side have pleased to object and take exceptions at what was affirmed. I shall not (ney Lord) enendeavour (is that Gentleman did) captare benevolentiam, to take the affections of the people, before I begin to debate the matter in quastion. I shall not tell them that I will not infinuite into their mindes any thing but what will stand upon the soundation of truah; but offer my thoughts, and freely submit to your judgement. Yet I hope to answer

particularly M Maynard's Exceptions.

He was pleased, first, to take exception at that general Principle that I averred, from whence I faid might be deduced the Right of all the Wirds to chuse the Lord Major and Sheriff; by their Representatives: Though the Gentleman might have pleased to temember, I did say I would wave those Principles of common Right, lest be should say we intended to bring all things to an uncertainty, by unravelling the botrom of Government to its first Principle; and therefore I infifted upon nothing but what we claim as our written Right. However, he might have pleased to spare quarrelling with that Principle, That a just Subjetion ought to be founded upon an affent of the People to their Governours power; especially in this Parliamentary time, wherein the Parliament buth pleased to declare, That the original of all just Power (under God) is from the People. And how Governours shall derive a just power from the People, burby an Affent of the People, I understand not; neither do I know how we can otherwise be a Free People, as the Parliament bath declared we are. If he had quarrelled with this in the time of the King, it had been for his interest to have said, That we ought to be subject to the Son and Heir of a Conqueror, because such. I hope better things now.

The second thing the Gentleman was preased to except against, was that which he onely imagined in his own brain, misreciting my words, like a man created by his sancy, to try his skill upon: for he supposed I did say, That if we had the Records that are now lost, we doubted not but that they would prove the affection we maintain: whereas I said, If we had the Records of those times, that are lost, they would show us what the Rights of People then were. And that I conceive to be without exception.

The next thing he takes exception against, is, what I said concerning Magna Charta; and would make this Court believe that I had thought all that great Charter was unalterable. I confess, it I had thought so, I would never have drawn Sword against the King. But the Gentleman

Major WILDMAN'S Reply.

was pleased to affert, That the King was by the Common Law; and if he agrees with Sir Edw. Cook's Liw, he laich thit the Common Liw is but Rella Ratio, Right Reaton; and I am fare the King stood nor by Right Reason: if he had, the Parl a nent could not have justly declared his Office burdensome and unnecessary. But the eru his, I did onely fay, Thir Magna Charta, the great Charter of England, was unalterable. according to the principles of the Gentlemen of the long Robe: I onely fock, it upon their bottom. I faid, If I should believe Sir Edm. Cook in what he faid upon the Statute of 42 Eda. 3, I must then say, that an Act of Parliament made contrary to that part of the great Charter that was declarative of the Common Law, was null of it felf: for he faid this part of it was unalterable. Thus I give them onely their own authority, and made it no affertion of mine absolutely: Though, under his favour, I think a man may affert, that what is founded upon the true Common Law of England, as Sir Ediv. Cook faith, which is Right Reafon, no Authority whatfoever ought to alter : (Ifpeak not of circumftinces:) for if we should aver that, we should aver contradictions in the very terms, and fay, That Right Reason of right may be altered from Right Reason. I shall let pass what the Gentleman was pleased to say of the Laws being edge-tools, and of men cutting themselves with them. I believe he met with an Argument for the Peoples Right that was an edge tool in his way; and he was loth to break his shins over it, and therefore he past over the Argument with a grave caution of the shirpnels of the Law, that he might divert your thoughts from it. But the Gentleman coming a little never to the matter, lays down his Maxime, which is this, That ever fince the Is of Edward the fourth, these Liveries have had the choice. And then he argues thus : Saith he, The case would be very hard, to have your titles of Land, after one hundred and ninet, yeers possession, to be questioned: And it it not as hard, that the right of the Liveries to Elections should now be questioned ? Under the Gentleman's favour, the case is very different. I suppose no man pleads for the like title to a Power or Authority over the People, that men have to their Lands, nor upon the same grounds. If the Titles were alike, it were just to buy and sell Authority, or Places of Trust and Government, as we buy and fell Lands, or Horles in Smithfield; and this our Common Law abhors. If we speak of people that are arrant meer Vasfals, like the Slaves in Argier, Authority over them is indeed bought and fold: but I hope we are not to be so esteemed; and yet the justice of those bargains is not clear. But certainly mens Tilles to Land, and to a power of Goverament, are, or ought to be of a different nature : And I shall make bold to offert. That 'tis no hard Cafe, that the Right of any number of men claiming a power in or about Government by succession onely, should after 190 yeers possession be questioned. Suppose M. Maynard could have made good the Livery mens claims to the election of the chief Officers of the City by custom, (but then he must have more then doubled

doubled the time of the usage he spake of, yet I humbly conceive that the exercise of any Power about Government is not made just by continuance of time, unless it were just in the Osiginal. If long thurpation of a Power in or about Government could give a right to that Power, all the Foundations of just Government were overturned, and by Consequence it were not right or just to take

away an usurped Power it the Usurpers be grown old.

Next. The Gentleman is pleated before he comes to his material Arguments, to infinuate strange, huge, dreadful, monstrous Confequences that would ensue, in case any man shall deny his Assertions, he is pleased to fay, what strange consequences would ensue, if we should Say, for 190 years all the Lord Majors or Sheriffs of the City of London have been unlawfully chosen? Truly I could only answer, That we might have faid before the Parliament executed Justice upon the King and cast off his Family, what strange Consequences will ensue? If we should say, that almost for 500, years the people of England have been governed by them that came in unlawfully, and claimed their Power successively, to make the people their valials, by the Sword of William the Conqueror, but the Parliament was not affrighted by such Bugbear Arguments to do Justice upon him, and take away the Power that his Family claimed by Conquest over us, and I beloeve Mr Majnard will not say they did unjustly. But suppose that which he suggests, that the Majors have been chosen unlawfully so long, 'tis time then to provide for a lawful Choyce; and the continuance of the unlawful will breed more of Mr Maynards monstrous Consequences; and it it be unlawful, 'cis not forbearing to fay fo that will amend the Confequences.

But now the Gentleman comes to his Polition, and faith, That this Government that is now is lawful. The Gentleman might have pleafed to have spared that; I did not yet affert that the Government that is now is unlawful; yet he may take some Answers to his Arguments, or

rather Authorities for the legallity of it.

The first Ground he builds upon for the lawfulnets of this Government, is the Opinion of the Judges, which makes a luge Ctv. But by the way, the Question is not now concerning the Government, but only concerning the Choosers or Electers of the Government, but only concerning the Choosers or Electers of the Government, but only concerning the Choosers or Electers of the Government, but only concerning the Choosers or Electers of the Government, but only concerning the Government may be the same still, though the manner and way of electing these Governors may be altered from what it is at present, Yet to that Opinion of the Judges, which makes the great notice in the Court; Ob (saith he) tis the Opinion of all the learned Judges: and then he paraphrases upon the goodness, honesty, learning and same of the Iudges that were named in the Bock produced. It may be those Gentlemen of the Long Robe were Black-Swans; yet the Argument from Authority is none of the strongest, 'Tis not a very good Consequence, that the thing is just because good men thought so.

Yet under savour the Opinion of the Iudges I take to be not the most certain or unalterable amongst men, nor the most unbyassed by their own Interest. I believe if a man should go to the twelve Iudges, he shall scarce find sour or three of the twelve of the same opinion in a dubious case; yet if there were more that agreed, the late Opinion of the Iudges in the case of Ship-mony may inform us how free the Iudges Opinions are from the Byass of private Interest in such cases, and how sit is for us to depend upon them; They could many of them agree to destroy Property at once in savour of the King; but however the Opinion of the Iudges produced by Mr Majnard, I crave leave to affirm to be against him in this case, at least not for him. I desire it may be read.

The Case of Corporations, touching the Election of Governors in the fourth of the Lord Cooks Reports, sol. 77,78.

In the same Term at Serjeants-Inn in Fleetstreet, it was demanded of the chief Iustices, Popham, and Anderson, and Periam, chief Baron, and of the other Iustices. That where divers Cities, Burroughs and Towns are incorporate by Charters, whether by the name of the Major & Commonalty, or the Major & Burgesses, and on the Baylist and Burgesses, &c. or the Aldermen and Burgesses, or the Provost and Sherifts, or Burgesses, or the like; and in the said Charters it be preseribed that the Major, Bayllfts, Aldermen, Provosts shall be chosen by the Commonalty or Burgesses, and of the ancient and usual Elections of Major, Baylists, Provosts, and by a certain CHOSEN number of the chief of the commonalty, or of the Burgesses, commonly called the Common Councel, or by other name, and not in general by all the Commonalty or Burgestes, or nor by so many of them as will come to the Election, shall be good in Law, for asmuch as by these words of the Charters the Election shall be indefinitely by the commonally, or all the Burgesses. And which Question being of great importance and consequence, was referred by the Lords of the Councel to the Justices, to know the Law in that case; for that divers attempts were now of late in divers Corporations, contrary to the ancient usige, to make popular Elections; and it was resolved by the Iustices upon great deliberation, and upon Conference had amongst themselves, that such accient usual Elections were good, and well warranted by their Charter, and by the Law also; for in every of their Charters they have power given them to make Laws, Ordinances, and Constirations for the better Government and Order of their Cities or Burtoughs, and by force of which, and for avoyding popular confusion. they by their common affent constitute or ordain, That the Major, Bayliffs, brother principal Officers, shall-be chosen by one certain Select number of the principal of the Commonalty, or of the Burgesses, as is afore-

faid, and preseribe also how such Seletted numbers shall choose; and fuch Ordinances and Constitutions was relolved to be good, and allowable, and agreeable with the Law, and their Charters, for avoyding of popular Diforder and Confusion; and although that no such Constitution or Ordinance can be thewed, yet it shall be presumed and intended in respect of such special manner of ancient and continual Election, which special Election is not begun without common Consent; that at the first late Ordinance or Constitution was made, such reverend respect of Law doth give to ancient and continual allowance and usage, as it had been within time of memory. And the Custom of most faithful Antiquity is to be esteemed: The things which are done contrary to the custom and usage of the Ancients either please or seem right, and the frequence of the A& premifeth much, and according to that Resolution the ancient and continual Usages have been in the Civies of London and Norwich, and other ancient Cities and Corporations. And God defend that they shall be now innovated or altered, for that many and great inconveniencies will arise upon the same; all which the Law hath well prevented, as appears by that Reloludon.

First, My Lord, observe, That the Question here resolved is not our Question, she Question here resolved was this, whether an Election of a Major, not made by all the Commonally in a Corporation, or at least as many as would come, was good in Law? But our present Question is only this, whether the Commonally of this city ought not to have their Representers to choose the Lord Major? So that we do grant, that

an Election not made by all the Commonalty may be good.

Now, my Lord, observe the Indges Resolution of the Question; they resolve that an Election-made by the Major and Aldermen, and a tertain chosen number of the choyce of the Commonalty; is good in Law. We concur with the Indges, keeping close to their words, A tertain Chosen number of the Commonalty; and to those other words of theirs, viz. Such ancient usual Elections; that is to say, such ancient Elections by the chosen number of the Commonalty are good in Law. Now we deny that the present Election of the Lord Major by the Livery-men is the most ancient usual way of electing, and that the Livery-men are a chosen number of the Commonalty, I mean, chosen according to any right of choyce, that right being in the Commonalty.

Bur, my Lord, 'tis very observable in this Opinion of the Iudges, upon what Ground they judged such Elections valid in Law; the Ground is this, For 'tes to be imagined or supposed, say they, that such autient and continued Elections did not begin without common affent. Hence 'tis evident, that the sudges imagined that all the Citizens had the right of choyce in them, & that they had agreed that a chosen number of themselves should choose in their stead; So that the D 2

Iudges in their Opinion took the chiefen number of the chief of the Commonalty that did elect the chief Officers to be the Represen-

ters of the whole Com nonalty.

Now if your Lordship please to remember we produced an A& of the Common Hall of London, made long before the Liveries made any claim to be the Choolers, and at an Assembly, when the Guild-Hall was filled with the Commonalty, wherein they did assent, that there should be a certain number of every Ward proportionably that should be the Electors of the Major and Sherists; So that the way we propote, of several men of every Ward representing the Wards to elect, is founded upon a common Assent. They produce no one A& of a common Hall, that should make it appear, that it was ever assented unto by the Commonalty, that the Livery men of the Mysteries should be the Choolers of the Major.

Mow my Lord I humbly offer it to this honorable Court, Whether this opinion of the Judges about Elections, produced by Mr Maynard as the pillar whereon they build the lawfulness of the Liveries Elections, do not rather speak them to be unlawful, in my humble opinion, this that those learned gentlemen flourished like Goljah's sword.

against us, slayes themselves.

After Mr Maynard had produced the Authority of the Judges, as he supposed for his Clyents case, he argues from confequences, faith he, If this present way of Electing by the Liveries were not Lawful, marke the confequences, your Charter, faith he , is forfeited ; this I confesse is a big bellyd word, but how will this affertion agree with what Mr Maynard, Mr Hales, & Mr wilde, all affirmed, That the Charters of the City did not originally give the City those Liberties that are mentioned in the Charter, but that the Charters were only Declarative of the Cities rights, thewing what their rights were before the Charters, now if the Charters give not the City their rights, certainly you cannot forfeit your Charters, unless the Learned Gentlemen shall please to say, You shall forfeit the Declaration of your rights (for the Charters are no more by their own confession) and if your forfeiture be no more you may enjoy your Liberties still, notwithstanding such a forfeiture as they pretend. But suppose a man should say what I did not yet say, That he present way of Electing the Mayor is unlawful, is it any more then this, that the Citizens have suffered their right to be taken from them for many years, and others to enjoy it unlawfully, and how will this consequence be deduced from thence, That the City hath forfeited their rights; I confesse I understand not by the Law that a body Politique or Corporation, as such, is under harder Laws in our Nation then the Members of the Common-wealth severally; now no man in England can forfeit his rights without & Legal conviction of some crime for which the Law censures him to forfeit his rights; and I know no reason why the

the City should have such hard measure, that in case the free men have suffered the Companies to usurp their right, that therefore all the Cities rights should be forfeited. But without question this Argument might have frighted you in the Kings time, then some needy projecting Courtier might have frighted you with the forfeiture of your Charter to the King, and eased you of some of your bags, upon pretence of soliciting the King to renew your Charter for an easie Fine; but now if you be satisfied you have erred from the Rule. I beseeve you may return to do right and enjoy your Liberties without

paying a fine.

Mr Majnards next Argument for the Liveries Elections was this, I hat tis founded upon a constant usage time out of mind, so that, so the the City now prescribes unto this way of Electing; and yet the Gentleman was pleased afterwards to consesse, that to make a title by prescription there must be a constant usage since Rich, the first time, and they only produce an Ast of a Common Councel for the Liveries Electing about 174 years since, and will suppose that that Ast of Common Councel was in confirmation of what was the custom before, whereas they produce no one footsep of a Record before that time to prove that it was the usage to chuse by Livery-men, but on the contrary is hath appeared that the Election hath been 400 years since by a select number out of the several Wards, which cannot be any way supposed to be meant of Livery-men, they not coming as men from several Wards, but as men from several Companies.

The next thing the Gentleman faid, was this, That he hoped we would grant that we did both depart from the Charter it felf; for. faith he, if we found the way of electing upon the Charter, the Charter running to the Citizens indefinitely, it must be understood of all the Citizens and Barons; and, saith he, you grant, it is impossible they should all together make the Election, so we both depart from it. Under his favor I must be bold to deny it; We depart not from the Charter, for we fay, that the Charter giving a right of choyce to all the Citizens, they may proceed in their Elections, either by themselves personally, or their Deputies; and they finding it inconvenient to meet personally, may depute others to make their Elections; and an Election so made is truly said to be made by the Citizens. So that in case that way of Electing were admitted which the Petitioners propose, it were directly agreeable to the Charter; for then indeed the Citizens should chuse, because they chuse every one of them by their Deputies, as all the People of England make Laws in Parliament, because every mans Deputy is, or ought to be, there in Parliament.

Next Mr Magnard answers an Objection; If, saith he, it be objected, that in the way of Election that is by the Livery-men, all are not represented; saith he, it is true, if you take it in some sence; Major VVildmans Reply.

but, salth he, if you take it in the sence of the Law, therein they are tepresented, and it is the City makes these Elections; Saith he, the Law sith so; as, saith he, in case a mans hand moves, it is the man that hoves, or his eye sees a colour, it is the man that sees. I hope the Gentleman will please to consess a vast difference between a Body natural, and a Body politique; Because he may truly say, if a mans hand moves, all the man moves, therefore will he say that what a few, or one member of the City doth, is the Cities action? If so, if one in the City commit Treason, all the City are Traytors. I believe, Gentlemen, you would be loath to admit of such a Law.

But to confirm this affertion the Gentleman produced something out of that which he called articuli super Chartas, where he saith, the King granted to the People to chuse Sherist, and yet the people did not chuse them all in general, it was the Freeholders chose them. Mr Maynard, if he pleaseth, to id have rold when the People in general were restrained from electing Parliament men, and other the Sherists also, and upon what pretence it was put upon Freeholders onely, and how it served the Kings ends to procure that Statute of Restriction; if I forget not the time, it was in the 8 of Henry 6. Chap 7. But however Mr Maynard should have proved this to be

just, before he can prove the other to be just by this.

Now the Gentleman is pleased to come to examine the presidents we produced, and saith, he will turn our own swords into our own bowels; and endevors to do it thus;

First, saith he, you prove that the Wards did send several persons to these Elections 400 years since, but you prove not that the Wards chose these persons; you read indeed Records that said these persons were summoned to the Election, but who summoned them? certainly the Major summoned them, and he summoned whom he would. I verily believe this would be a very bitter pill for the Citzens to digest, to say the Lord Major should summon when he pleased, and whom he pleased, out of every Ward to come to the Election, the Government would be turned topsic turvy, if that were admitted, then he that should be once Lord Major, might be for ever Lord Major, if he could make but a friend or two in every Ward, and if this be smagined to have been the eustom of the City, I wonder who summoned those that chose the first Major.

But the Gentleman is pleased to make his Argument thus; saith lie, it is not inamed in the Record you produce, that these men were letted by the Wards, though summoned from the Wards, therefore with hie, they were not elected. It is a new kinde of Logick that must

must make this Argument good; "Tis not recited in the Record toat they were chosen, therefore they were not chosen; I might as well say that in your summon to a Common Councel, your being chosen by the Wards is not recited, therefore you Gentlemen of this Court were not chosen. I confess I am not very well verst in the Acts that are in this Court, but I think there is no Act of the Court recorded, wherein it is said, there were present the Common Councel that were chosen by such winds, shall I therefore conclude that they were not chosen by the Wards? I must first learn a new Logick, before I shall dare so to conclude.

The second thing he objected against the presidents, was this, Those twelve men of the Wards that are said to elect the Major. faith he, must needs be understood to be Common councel n.en; Truly, besides the Answer of Mr Price, that it was not probable, because the number of Common-councel would then have been far greater, then now it is, when the City was far less; to let that pass, I onely answer thus, that if they please to look in 22 of Henry the fixth, it is in Lib. K. fol. 214. it is said in the Writ that came down from the King to prevent disturbances at that Election of the Major. that none should be there but they that had an interest to be there. those that were in Common-councel, and the more discrect and able men of the wards, so that besides the common councel, there were others that were wife and able dilerect men in the Wards that were to come to the Elections, which probably were those that were chosen by the Wards. If your Honor please the Record may be read; The former Answer serves to Mr Maynords Observation of the Ele-Gion of the Parliament men for the city, wherein it is said only six of * Ward were called to be there, but not chosen; I propose it to him, whether it is probable that the Lord Major had power to pick fix men out of a ward to chuse the Parliament men for the city, or whether this be a good Argument, because they are said to be summoned by the Lord Major, and not faid to be elected, therefore they were not elected. I hope the Gentlemen of the long Robe have better Arguments.

The last thing that Mr Maynard avers, is, the inconveniencies in point of Law that would ensue upon that which we pray for, which he calls an Innovation. But I humbly crave leave to aver, unless I could see his consutation, that it is an ancient Right of the Cities cans of this city. Those inconveniences in point of Law, he saith, are these, the hazard of forseiting of Charters. I conceive that to be answered before, That is a city should depart from a just way, if their Charter were but the consirmation of their Right before, there is no forseiting of that Charter, for the Charter gives them not that

Right.

The next Argument he draws from every mans living in a Court Lett, and that at twelve years old he ought to meet there, and he faith from thence, if there should be Representers of the Wards chosen, to make the choyce, it might be that those that are no citizens might meet to chuse a Major, and citizens that live without thould not chuse. I think under his favor the common practice will answer to that, when the Wards meet for the choyce of Aldermen, or common councel men, none but citizens have their Votes in it, there is no danger that those that are aliens should either be chosen or choosers.

His next Argument against this Petition is this, saith Mr Maynard. It will tend to Popularity, if this should be admitted, that the wards should choole; and I leave it, laith he, to the court to judg what the Configuent of that would be; all mens Educations, saith he, are not such as make them fit for Government, or fit to choose Governors. Truly if it please the honorable court but to consider who they are that are now the Electors. this Arrow of the Gentlemans returns upon himlelf I could fay more of it, if I should not be thought to reflect, because I have a reverend respect to all kind of Trades; but if I should speak of all the several Companies, the Bricklayers, Bowyers, Fletchers, Turners, Coopers, Tallow Chandlers, &c. if I should speak of the Education of most of the Livery men of forty Companies of the City, and compute their number, and tell you upon what terms most are admitted to be of the Liveries, that is, for a finall sum of money; I conceive the Court would quickly judg which way of Election tends most to Popularity, as he calls it, and who propoleth most men that are unfit for Government, to choose the Lord Major and Sheriffs. Will any man suppose that the Educations of all the Handicrast men of the Liveries render them so able and discreet, that they are fit for Government? I farmir it to the Court.

As for the great Word Mr Maynard was pleased to add about the ill consequents of this change that would be to other Corporations, saying, That this is an Earthquake comes under them. I shall conceive his Oravory in this to be of the Earthquakes nature, a swelling vapor, unless he will be pleased to shew me how the Liberty of the City, or any one Citizen, is undermined by what is proposed; only I must observe to the Court, that where Arguments are wanting, their room is commonly supplyed with words and presences of huge strange consequences, that will insue, if their desires be crossed; But the Arguments from a consequence, I believe they well know their strength is not of the first degree; but however to suppose an ill consequence my ensue upon a City, or company of persons exercising their right, and thence to conclude they must not enjoyir, is a way of arguing

that I understand nor.

I confess M. Ha'er is pleased to deal very ingenuously in laying down those principles wherein we agreed, which was. That the Liberties of the City were by prescription, and that the Charters were but Declarations of what our Liberties were, and that the Common-Councel-men ought to have a Vote in their Elections; But I said not they ought, but that they might have their Votes if they were chosen to that purpose: But he was pleased to say, that the Lord Maior, Alderman, and Common-Counsel, were a kind of a Representative of the City, and therefore he would thence aver, that there is no inconvenience to the City, feeing they have such a Representative. I shall answer M. Haler thus, If a man should say the Parliament represent the Commonwealth, and seing we have a Representative, what matter if that 200. or 200, men more went into the Parliament and voted with them, the people of England furely would not think themselves well dealt withall, nor think those Acts so passed to be valid. M. Hales is pleased also to purfue M. Marnards mode of imagining strange kind of consequences that may enfue upon this, and faith he, How if the people will fay, when you brought it to the Reprefentatives, we will not be bound to Representatives, but we will come and chuse personally; what then (faith he) would be the consequence of this? Truly if M. Hales will uppole that the people will not be bound by any Government, not by Acts of Parliament, he may fill his fancy with bad consequences; and why may it not be supposed as well, that all the people in England should fay, we will go and make Laws our felves in l'arliament as well as that the people should not be willing to be bound in their Wards to chuse the Lord Major and Sheriffs by their Representatives? I shall let pass also what M. Hales was pleased to urge concerning that principle of a just subjection of people to Governours, to be founded upon an Affent, because he was pleased to confess very ingenuously, that I waved those Arguments that might reduce Government to an incertainty, or to the first principles of general Common Right. But saith M. Hales, if that principle be allowed amongst a free people, that subjection to their Governours ought to be by meer affent,; faith he. we must consider there is a Personal and a Virtual affent, and it shall be conceived to be a Virtual consent, where there hath been an usage time out of mind for the People to be subject to any form of Government. Of which nature he endeavoured to prove the way of electing the Lord Maior and Sheriffs by the Livery-men of the several Mysteries; whereas if M Hales please to remember, they do all aver the ulage of this way of Electing, but to have been for 174. yeers that they can prove. As for any hippolitions that it was before, I think there is enough answered to that, there being no ancienter Records that mention the choise to have been by the Livery menswho come not as fent from Wards. And though M. Hales is pleafed so ballance the Records produced on one hand and on the other, and faith thus that they produce for one hundred seventy sour years, to shew E.F

the this fiath been the way of electing which now is; but faith he, those Records produced to prove another way of electing, is but a flort time. If he please to remember there is no foot-step of mention make of any Livery-men, or of any of the Mysteries having a Fover to elect, until that 15, of Edw. 4, and we find from Edward the hritzboat 200 yeers before, that there were thelve men in the Wards hat were E'ectors, which we may well think to be the Representors of those Wards, and chosen by them for that jurpose; and no foot steps of the discommunance of it, from that traje produced; but we may well say that all he Records that mean on the Communaties choice, are to be interpreted by the former Record; fund that Record comes wherein mention is made of Livery-men, there being no mention made of them-formerly, under that, or any other name as such.

That which he was pleased to alledge, that it was the Common-Counfe, men that were those tweeve men, is universed before in M.

Majnardi, and theretore a pais it over-

the Livery because there is no mention made of the most shall onerly an were that it is as hard for them to (a), because the Common Counfel mensare not mentioned to joyn with the 12 of the Wards, therefore they were excluded. But faith M. Hales, it is the mage that that explain who is much by the communately and what is meant by those more able and different men in the city that are thosen; we define but to fland to the explanation of the Record; we produced an ancient Record that has a necessary the mode Communately; that is to lay, the more able and different men of the Ward; we would take have him produced Record where it is laid, the whole Communately, hat is to fay, the Livery men, at least any time before that of Ed and the fourth.

Asto the Arguments from the confequences, if this Government were not right; then with Miles, all the i urchales you have made

fince that time you a teren the way of Elections, is null-

I must bumbly crave seave not to submit to his judgement in that till he give me better reasons; for I suppose it is grounded upon that of faster if gia Charter, which was answered before; for though the Body corporate nave not had their Officers rightly eleted, yet the body is not thereby distoived, and therefore their purchase may be good, and

Without lear of loctedure

The Arguments (A Wild was pleafed to use, were but to inforce what his brethren had faid, that the 12 Electors of the Wards must be meant the Common-Counter, because (taith he) no ment on is made of the Common counter; but it hath bin proved that in an election mention a made of the Common-Counter, and of other honest ment of the City, before early mention, a made of the Common Counter, yetto may they were not mentioned.

Major Wildmans Reply.

mentioned, therefore they were not called to that Affen bly when the Election was made, is no good confequence; upon the grounds before afferted, M. Wilds objection that we would embed to introduce a novelty, falls to the ground; for we conceive the way of 12 unen out of the Wards to be far more ancient than the way that is now practified. And as for M. Wilds Arguments concerning the danger that would enfue upon the multitude coming to Elschions, upon the fame ground he may fay, the Wards must not chuse their Aldermen nor Camboon Councel men, if the Citizens should be deprived of their right upon that ground, that it is popularity, or they may be divided, and fall to blows; upon the same grounds they may take away the liberty of chusing Common Councel men, and Aldermen and all their common Freedoms; and if these sears shall afright men show the claim of their Right, they may be told next that the Sky may fall, and therefore they must not go abroad.

As for the last objection of M. Wilds, that in this way of popularity its possible a choise may be made of unfit men. I shall onely ofter this to the consideration of the Court, Whether it is more probable that a whole Ward meeting together to hase a small number of men that should represent them in the electing their Superiour Officers, should chase more unfit men for that Election, then a company it may be of Coopers, Tallow-chandlers, or other manual occupations should admit to the Livery, who admit all that will give so much money to be of the Livery; who are the likelyest men to send sittest men for the chaire. I humbly refer to the Honourable Court, though it is strange to me to hear that the feat-of popularity, or of giving way so much to the Liberty of the people, is so much instituted on, now we are come into the way of a Common-Wealth; it is a little difforant to the present constitution.

Now I shall humbly submit to the Court what hash been offered in answer to that which the Gentlemen on the other side have objected; and humbly crave leave to be still of opinion, that I see nothing of firength objected against our Assertion, viz. That the liberty of Electing is the Right of the Citizens of Lendon in general, and so declared by the first Charter we find upon Record; And if it be the liberty of the Citi ent in general to chuse, every man must chuse either by himself or deputy, and they all agree it is impossible they should all chuse personally a why they should not then chuse by their Representatives, I humbly,

leave to the judgement of this Honourable Court-

M. Maynard.

TE have taken up a great deal of time and patience, I will repeat nothing of what bath been faid, only I think M: Wildman fears nothing of a popularity; for the matter, the measure is before you, how long one, how long another, we differ upon the Records recited, we think they are for us, they think the contrary; it lies in your judgements, and the measure of time how much kis; I om fure they cited no Prefidents before Edward the first's time, and none fince Edward the third's time; somehat was spoken of Henry the fixt; I will not enter into a particular recapitulation, but there hath been pothing of that I apprehend we have faid, but hath been answered onely by the by; and that which is the strength of that we rely upon, both been let go, and some generals taken hold of only; I shall give you but this observation, that it is like enough the Maior and Sheriffs, the Chamberlain who is the keeper of all the wealth of the City, and the great trust of the City reposed in them, will much depend upon this string; Two Gentlemen have here argued, and observe it, the one grants what the other will not, we all agree, and how they will agree when a great many come together, I leave it to you to judge-

M. Hales.

Onely this, Gentlemen, some two or three little mistakes there have

been : I think not that they are wilful.

First of all, Whereas they would offer it to you, that the words of all the Commonalty, should be intended of the twelve men of the Wards, that is mistaken: for, Genelemen, it was in a case of a choice of Aldermen, which is made by the Wards, and is not made by twelve men, as the very Record it self speaks; and therefore that is misapplied. It is in case of a choice of Aldermen, which is made by the Wards in their

bulks; and noe in twelve men.

And then next of all, for the continual Usage, they mikake in that. For that Usage, they give an instance in the third of King Edward the first, till some later time in Edward the second, and in the twentieth of Edward the third: But from the twentieth of Edward the third: And the third: But from the twentieth of Edward the third: Not they would indeed exclude the Common Councel from having any voice of right. We say, You do well. If the Common Councel have no right, then may the Livery-men have no right neither; for their Rights will stand and fall upon the same bottom. We say onely this: For that Record of Henry the sixth's time, it's nothing at all to the purpose; for that is this, That all those that were in the Common Councel, together with other persons that were called

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Called in, either from the Ward, or City, be it which it will: there is no man doubts but most of the Liveries they live in the Wards; and therefore it is not an argument that they were not persons that were of the Wards. And whereas we have no footsteps of the Livery in Record, it is true; the stiling of the Record is not of the Liveries; your Elections are not said to be by the Liveries at this day, but by the Commonalty, as it was neer two hundred yeers ago; and yet in truth done by the Common Councel and Liveries: so that all is one.

M Wild.

My Lord, I shill onely desire M. Latham may read this Record in the twentieth of Edw. the third; it is that whereupon I built my Argument; that is, Thus it was agreed by all the commonalty of the City, that the Lord Major for the time being shall be chosen by twelve, eight, or six our of every Ward, according to the greatness or bigness of the Ward. That must of necessity be the Common Councel.

M Maynard.

One thing I forgot in that, That your Livery-men come not by number; Common Councel-men they are summoned by a certain number.

M Here the Record mas read.

M. Hales.

This is that we say, and here we leave it. We say, That that Reason that these Gentlemen do use upon their presidents in Edward the first's time, and Edward the second's time, is to exclude the Common Councel, as well as the common Hall; and we say, that upon the same reasons they may exclude the one as well as the other. There is no mention mide of the common-Councel to have a voice in any of the Elections' in Records, and therefore they would exclude them. We say, They do the Record and themselves wrong; for though it's truth, there is mention made of the Maior, Aldermen, and some others, it is not exclusive; for some others there might be, and yet not with standing it is agreed that the Common-councel may make an election, and vote, and are not excluded; and therefore the Livery-men may do the same. And when is that higher on so so so so so so so that continued course.

M. Wildman.

My Lord, We still infist upon it, that those presidents produced, being for twelve men out of every Ward, cannot probably be conceived to be the Common-councel; for how can we conceive that the Common councel, at that time when the city was not a fourth part of what he is, should consist of as many or more then it doth now? But by the Record now read, it appears, that it was agreed that so many men of every Ward should come to the election; and then surther agreed, that every Alderman of every Ward should cause such a number, a smaller number then the other, to be chosen, to be of the Common councel; and

Teis not faid that they mould be the electors. The Record speaks of two things agreed unto: First, that one number of men should be elected for the Wards; secondly, that another number of men should be chosen by the Wards, to consult, as the Record such, de ardain regain, to

confulr ab surthe hard matters that concerned the city.

Ber Suppose Is should grant the learned Genrlemen of the other side this which they so much contend for, viz. This the twelve men of the Wards, mentioned in the Records to be the electors of the Major, were the common councel; and that, as M. Wild world have it, the twelve. eight, or fix of every Wir I, that the common Hall agreed in the 20 of Edw 3. should be the chilers of the Moior, that those were the common councel; suppose this, What advantage to their cause will the Gentlemen gain from thence? The conclusion from thence would be. That the common councel were the onely electors of the Major; and what becomes of the Companies Liveries, for whose power in electing they plead? And if it were the common councel that were the cle-Aors, it dorn establish our foundation, which is this, This all those who are chosen by the Wards; and do represent them, ought to chuse the chief Officers of the city: And if the Wards would trust the common councel onely to be the chasers now, and declare it in the choice of them, we should not oppose it. M. Majnard.

Gentlemen, I forgot one word that M. Wildman was pleased to deliver for Law, that you may believe, if you think good, That there is no forfeiture of Charters. Now what the Parliment may do under favour, is no question; but no doubt but there is forseiture of Charters. And he sith, Twelve Judges there are, and but few of them agree. You must be

fure, That it is the Judges part to judge your actions at last.

FINIS.





















